

# EXHIBIT 3

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Page 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :  
et al., :  
Plaintiffs :  
v. : No. 1:23-cv-00108  
GOOGLE, LLC, :  
Defendants. :  
:

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,  
taken at the Law Offices of Paul, Weiss,  
Rifkind, Wharton & Garrison LLP, 2001 K St NW,  
Washington, DC, beginning at 9:35 a.m. Eastern  
Standard Time, before Ryan K. Black, Registered  
Professional Reporter, Certified Livenote  
Reporter and Notary Public in and for the  
District of Columbia

Job No. CS6043164

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	Page 2	Page 4
1 APPEARANCES:		1 THE VIDEOGRAPHER: Good morning. We are
2		2 going on the record at 9:35 a.m. on August 21st,
3 UNITED STATES DEPARTMENT OF JUSTICE		3 2023. Please note that the microphones are
4 ANTITRUST DIVISION		4 sensitive and may pick up whispering and private
5 BY: KATHERINE CLEMONS, ESQ.		5 conversations. Please mute your phones at this
6 VICTOR LIU, ESQ.		6 time. Audio and video recording will continue to
7 ALVIN CHU, ESQ.		7 take place unless all parties agree to go off the
8 MARK SOSNOWSKY, ESQ. - Via Zoom		8 record.
9 450 5th Street, N.W.		9 This is Media Unit 1 of the
10 Washington, DC 20530		10 video-recorded deposition of Mr. Christopher
11 202.514.2414		11 Koepke in the matter of United States, et al.,
12 katherine.clemons@usdoj.gov		12 versus Google, LLC, filed in the United States
13 victor.liu@usdoj.gov		13 District Court Eastern District of Virginia
14 alvin.chu@usdoj.gov		14 Alexandria Division, Case Number
15 mark.sosnowsky@usdoj.gov		15 1:23-cv-00108-LMB-JFA.
16 Representing - The United States of America		16 My name is Orson Braithwaite,
17		17 representing Veritext Legal Solutions, and I'm
18		18 the videographer. The court reporter is Ryan
19		19 Black, from the firm Veritext Legal Solutions.
20		20 Counsel will now state their appearances
21		21 and affiliations for the record.
22		22 MS. GOODMAN: Martha Goodman, from Paul
23 ALSO PRESENT:		23 Weiss, on behalf of Google LLC.
24 Orson Braithwaite - Legal Videographer		24 MS. MILLIGAN: Heather Milligan, also on
25 Kenneth Whitley - Department of Health and Human		25 behalf of Paul Weiss, for Google.
26 Services		
	Page 3	Page 5
1 I N D E X		1 MS. CLEMONS: Katherine Clemons, with
2 TESTIMONY OF: CHRISTOPHER KOEKPKE	PAGE	2 the Department of Justice, on behalf of the
3 By Ms. Goodman.....6		3 United States of America, CMS and the witness.
4 E X H I B I T S		4 MR. LIU: Victor Liu, also with the
5 EXHIBIT DESCRIPTION PAGE		5 Department of Justice, on behalf of the United
6 Exhibit 65 a document Bates Numbered		6 States and CMS.
7 CMS-ADS-11906 through 11974...117		7 MR. CHU: Alvin Chu, on behalf of United
8		8 States.
9 Exhibit 66 a document Bates Numbered		9 MR. WHITLEY: Kenneth Whitley, Office of
10 CMS-ADS-23248 through 23337...136		10 General Counsel, Department of Health and Human
11 Exhibit 67 a document Bates Numbered		11 Services.
12 CMS-ADS-59892 through 59893...151		12 MS. GOODMAN: And could the folks
13		13 attending remotely please state your presence?
14 Exhibit 68 a document Bates Numbered		14 MR. SOSNOWSKY: Mark Sosnowsky,
15 CMS-ADS-593107 through 593110..167		15 Department of Justice, and I will be in and out
16 Exhibit 69 a document Bates Numbered		16 of this deposition remotely. So if you lose me,
17 CMS-ADS-183807 through 183811..181		17 please don't -- you can continue.
18		18 THE VIDEOGRAPHER: Thank you.
19 Exhibit 70 a document Bates Numbered		19 Would the court reporter please swear in
20 CMS-ADS-529199 through 529200..190		20 the witness?
21 Exhibit 71 a document Bates Numbered		21 * * *
22 CMS-ADS-189390.....251		22 Whereupon --
23		23 CHRISTOPHER KOEKPKE,
24 Exhibit 72 a document Bates Numbered		24 called to testify, having been first duly sworn
25 CMS-ADS-64968 through 64971....258		25 or affirmed, was examined and testified as

2 (Pages 2 - 5)

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Page 218	Page 220
<p>1       thing. And -- and just describe other products  2       and ask us what our goals are, and what have you,  3       so that they would have a better understanding  4       about how -- about how their products could be  5       used, because, of course, they're trying to sell  6       their products.</p> <p>7       Q. Did you find those meetings to be  8       valuable?</p> <p>9       MS. CLEMONS: Objection to form.</p> <p>10      THE WITNESS: Valuable in what way?</p> <p>11      BY MS. GOODMAN:</p> <p>12      Q. Valuable to the work that you do at CMS  13       in advertising.</p> <p>14       MS. CLEMONS: Objection; form.</p> <p>15       THE WITNESS: I find them valuable, in  16       part, because it's really interesting to me to  17       see how people do their work. And, yes, some of  18       the data analytics that we've actually requested  19       that they've done for us have been valuable.</p> <p>20      BY MS. GOODMAN:</p> <p>21      Q. Despite these meetings also being an  22       opportunity for Google to explain how their  23       products could be used, because, of course,  24       they're trying to sell their products, does CMS  25       still make an independent decision about which</p>	<p>1       including Google, have a policy that an ad should  2       not -- what's the word I'm looking for -- mimic  3       -- that's not the word I'm looking for, but it's  4       like that, mimic some other existing  5       organization, or mimic the government when you're  6       not the government, basically.</p> <p>7       So, you know, an ad that says they're  8       Medicare, and they're not actually Medicare, is  9       misleading to people, and there are a lot of  10       those ads on Google. And so when we find them,  11       we send them and they -- we have conversations  12       about that.</p> <p>13       Q. And what steps, if any, do you ask  14       Google to take with respect to these ads -- these  15       search ads you're describing?</p> <p>16       A. Take them down immediately. Asked for  17       some monitoring support. I've asked for it.  18       That is what I've asked for.</p> <p>19       Q. And what -- what has Google, in return,  20       provided to you with respect to these search ads?</p> <p>21       A. Google has taken ads down when we find  22       them, and that is Whac-A-Mole because anybody can  23       put up an ad on Google if they've got a credit  24       card. Google has created new policies about  25       taking out ads for health insurance, and have met</p>
Page 219	Page 221
<p>1       advertising products or services to use?</p> <p>2       A. Absolutely, yes.</p> <p>3       Q. Okay. Anything else, sitting here  4       today, that you can recall about any  5       conversations you have had with any individual  6       from Google --</p> <p>7       MS. CLEMONS: Objection; form.</p> <p>8      BY MS. GOODMAN:</p> <p>9       Q. -- relative to CMS's advertising?</p> <p>10       MS. CLEMONS: Same objection.</p> <p>11       THE WITNESS: That's a lot to try to  12       recall. So it -- true specifics? No.  13       Conversations? Yes.</p> <p>14       BY MS. GOODMAN:</p> <p>15       Q. Any other types of conversations, other  16       than what we've discussed which you recall having  17       with Google?</p> <p>18       A. Yes. Thank you.</p> <p>19       Q. You're welcome.</p> <p>20       A. In the search ad -- in the search ad  21       arena, Google accepts ads -- or has accepted ads,  22       from people who try to look like the government.  23       And we discover these ads sometimes. And every  24       time I see one, I would send it to Kunal, to  25       Michelle. And -- because most digital companies,</p>	<p>1       with us about those policies.</p> <p>2       Q. So is it fair to say that Google is  3       taking steps to address CMS's concerns with  4       respect to search ads that mimic the government?</p> <p>5       MS. CLEMONS: Objection to form.</p> <p>6       THE WITNESS: It is fair to say Google  7       has taken steps with regard to search ads.</p> <p>8      BY MS. GOODMAN:</p> <p>9       Q. How about with respect to display ads?  10       Are you aware of any conduct on the part of  11       Google with respect to display ads that has  12       negatively impacted CMS's advertising?</p> <p>13       MS. CLEMONS: Objection to form. And I  14       would caution the witness not to -- to answer the  15       question if your answer would reveal privileged  16       communications with counsel.</p> <p>17       BY MS. GOODMAN:</p> <p>18       Q. Are you able to answer that question?</p> <p>19       A. No.</p> <p>20       Q. Prior to having any conversation with  21       any lawyer with respect to Google Ads, any lawyer  22       from the government, did you ever have any  23       concerns that Google was engaging in  24       anticompetitive conduct related to display  25       advertising?</p>

## HIGHLY CONFIDENTIAL

Page 222		Page 224	
1	MS. CLEMONS: Objection to form. Calls	1	BY MS. GOODMAN:
2	for a legal conclusion.	2	Q. -- who charge on such a basis, to your
3	THE WITNESS: No.	3	knowledge?
4	BY MS. GOODMAN:	4	MS. CLEMONS: Same objection.
5	Q. And prior to any conversation with any	5	THE WITNESS: There are other providers.
6	lawyer for the government, did you ever have any	6	BY MS. GOODMAN:
7	concerns that Google was causing CMS to pay more	7	Q. And do you have the same concerns with
8	for display advertising than it should have been	8	respect to providers other than Google who charge
9	paying?	9	on a cost-per-impression basis?
10	A. Could you rephrase that, please -- or	10	MS. CLEMONS: Objection to form.
11	not rephrase. Just repeat it. That's what I	11	THE WITNESS: Yes.
12	meant. I'm so sorry.	12	BY MS. GOODMAN:
13	Q. That's okay.	13	Q. Okay. Has anybody at any advertising
14	A. I used the wrong word.	14	agency with whom CMS works ever told you that
15	Q. Prior to any conversation with any	15	Google was engaging in anticompetitive conduct
16	lawyer for the government, did you ever have any	16	related to display advertising?
17	concerns that Google was causing CMS to pay more	17	A. Not that I recall.
18	for display advertising than it should have been	18	Q. Okay. So sitting here today, and prior
19	paying?	19	to any conversation with any lawyer for the
20	MS. CLEMONS: Objection; form.	20	government, can you recall any concerns you've
21	THE WITNESS: The tough part here is	21	ever had with respect to Google's conduct and its
22	"should have been paying." That's an -- a really	22	affect on CMS's display advertising purchases?
23	-- that suggests a lot of information.	23	MS. CLEMONS: Objection to form.
24	That being said, yes.	24	THE WITNESS: Extremely informal
25	BY MS. GOODMAN:	25	conversations between me and my colleagues.
Page 223		Page 225	
1	Q. And what -- what concerns did you have	1	BY MS. GOODMAN:
2	with respect to Google causing CMS to pay more	2	Q. And what extremely informal
3	for display advertising than it should have been	3	conversations between you and your colleagues are
4	paying prior to any conversation with a lawyer	4	you referencing?
5	for the government?	5	A. Ones where we notice that all
6	A. It is possible -- in fact, indeed,	6	the digital ads that we place go through
7	probable, that when you are purchasing ads on a	7	double-click; that the analytics come through
8	cost-per-impression basis, that you're buying	8	Google analytics. There just seems to be a lot
9	things that are not useful to you.	9	of Google along the ways. And we've had those
10	Q. And so in what ways has Google, to your	10	comments, conversations and we just move on.
11	knowledge, caused you to buy things that are not	11	Because, in the end of the day, we're just doing
12	useful to you on a cost-per-impression basis?	12	our jobs.
13	And when I say you, I mean CMS.	13	Q. And have you rai -- ever raised those
14	MS. CLEMONS: Objection to form.	14	conversations with anybody outside of your
15	THE WITNESS: It has been a concern that	15	colleagues?
16	we have discussed. Whether it is -- the way you	16	MS. CLEMONS: Objection to the extent
17	put the question was, like, pure knowledge.	17	that question calls for privileged communications
18	Because other ways to potentially buy, which we	18	with counsel. If you're -- if you can answer
19	have not been able to do, would be to buy based	19	without referencing or being informed by
20	on outcomes instead of impressions.	20	privileged communications with counsel, you
21	BY MS. GOODMAN:	21	may do so.
22	Q. And is Google the only provider that you	22	THE WITNESS: Sorry. I'm just trying to
23	buy ads on an impression basis for, or are there	23	think and remember. It's mental gymnastics at
24	other providers --	24	this point. So --
25	MS. CLEMONS: Objection to form.	25	BY MS. GOODMAN:

57 (Pages 222 - 225)

## HIGHLY CONFIDENTIAL

Page 246	Page 248
1 ads for CMS, the ad agency makes the purchase, 2 the ad agency pays Google for the purchase. CMS 3 does not pay Google directly, but, rather, sends 4 a check to the advertising agency? Am I correct? 5 MS. CLEMONS: Objection to form. 6 Foundation. Calls for a legal conclusion. 7 THE WITNESS: CMS sends an electronic 8 data -- electronic -- not data, EFT. What's it 9 called? Anyway, an electronic funds transfer to 10 our ad agencies for the purposes of ads from 11 Google. 12 BY MS. GOODMAN: 13 Q. And it does not send the EFT -- CMS does 14 not send the EFT to Google, correct? 15 MS. CLEMONS: Objection to form. 16 THE WITNESS: CMS sends the finances for 17 the ads, based on our direction and our strategic 18 planning, to our ad agencies to pay Google. 19 BY MS. GOODMAN: 20 Q. And what happens if the ad agency does 21 not pay Google? Can Google come seek payment 22 from CMS? 23 MS. CLEMONS: Objection to form. 24 Foundation. Calls for a legal conclusion. 25 THE WITNESS: A vendor who has	1 MS. CLEMONS: Objection to form. 2 Foundation. Calls for a legal conclusion. 3 THE WITNESS: I do not know if the FAR 4 prohibits purchasing of ads from Google. 5 BY MS. GOODMAN: 6 Q. Okay. Do you know if it permits it? 7 MS. CLEMONS: Objection to form, 8 foundation, and calls for a legal conclusion. 9 THE WITNESS: Well, as we do purchase 10 ads from Google, I imagine it does. 11 BY MS. GOODMAN: 12 Q. Okay. 13 A. Because the Contracting Office would 14 probably stop us. 15 Q. And does the FAR permit CMS to pay 16 Google directly, meaning sending the electronic 17 funds from CMS to Google, without using your ad 18 agency as the intermediary? Does the FAR permit 19 CMS to pay Google directly for any digital ads 20 that it buys. 21 MS. CLEMONS: Objection to form and 22 foundation and calls for a legal conclusion. 23 THE WITNESS: I'm not expert enough on 24 the FAR, nor do I think that the FAR directly 25 talks about that topic as you laid it out.
Page 247	Page 249
1 worked with a prime contractor for the federal 2 government -- and it's not paid for by the prime 3 contractor -- can reach out to the federal 4 government. 5 BY MS. GOODMAN: 6 Q. Okay. And when they -- when you say 7 "they can reach out to the federal government," 8 are you referring to any actual ability from 9 -- for them to demand payment from the federal 10 government? 11 MS. CLEMONS: Objection to form. 12 Foundation. Calls for a legal conclusion. 13 THE WITNESS: You are now getting into 14 areas of the FAR, which is what governs federal 15 payment of things, for which my knowledge is, 16 unfortunately, a little vague. 17 BY MS. GOODMAN: 18 Q. Okay. When you say the FAR, what do you 19 mean? 20 A. It is a -- part of the Federal Code that 21 governs the federal government's purchasing of 22 goods and services. 23 Q. Okay. And does the FAR permit CMS to 24 pay Google directly for any digital ads that it 25 buys.	1 BY MS. GOODMAN: 2 Q. Okay. In the normal course of your 3 work, do you consider the Department of Justice 4 Antitrust Division to be counsel for the 5 Strategic Marketing Group at CMS? 6 MS. CLEMONS: Objection to form. 7 THE WITNESS: Yes. 8 BY MS. GOODMAN: 9 Q. Why? 10 A. Because they are legal counsel for the 11 federal government, -- 12 Q. Okay. 13 A. -- and I'm part of the federal 14 government. 15 Q. When did you first become involved 16 -- strike that. 17 When did you first become aware of an 18 investigation by the Department of Justice into 19 Google? 20 MS. CLEMONS: Objection to form. 21 Foundation. 22 THE WITNESS: Approximately? 23 BY MS. GOODMAN: 24 Q. Yes. Approximately. 25 A. This past winter.

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	Page 250	Page 252
1	Q. Was it in 2023 or 2022?	1 Microsoft Teams invite for a meeting. Subject:
2	A. I believe it was in 2023.	2 DOJ HHS CMS call regarding online advertising
3	Q. And how did you become aware in 2023 of	3 purchasing, which you are on in the "To" line,
4	an investigation by the Department of Justice	4 correct?
5	into Google?	5 A. I'm trying to get the subject. I will
6	MS. CLEMONS: Objection; privileged.	6 say what is correct is that I am on the "To"
7	And I'm going to instruct the witness not to	7 line.
8	answer to the extent that your answer would be	8 Ah, there's the subject. Sorry.
9	informed by or reveal privileged communications	9 DOJ HHS CMS call regarding online
10	with counsel.	10 advertising purchasing, so, yes, correct.
11	BY MS. GOODMAN:	11 Q. And this -- did you recall -- do you
12	Q. Are you able to answer that question,	12 recall participating in this call on January 6th,
13	sir?	13 2023?
14	A. No.	14 A. Yes.
15	Q. Okay. So is it fair to say, then, you	15 Q. Okay. And to your recollection, did the
16	became aware of an investigation by DOJ through	16 call last the 30 minutes between 3 and 3:30 p.m.
17	lawyers?	17 as reflected on this meeting invite?
18	MS. CLEMONS: Objection. Calls for	18 A. I do not recollect.
19	privileged information. I'm going to instruct	19 Q. Okay. Do you think it lasted longer or
20	the witness not to answer.	20 shorter than that amount of time?
21	MS. GOODMAN: I'm not asking for the	21 A. I do not recollect.
22	communications. I'm asking for how he learned of	22 Q. Okay. Did you understand the purpose of
23	something. The fact of learning it from lawyers	23 this call to -- for DOJ to understand how CMS
24	is not privileged, one way or another. I'm not	24 buys online ads?
25	asking for the communications by which he learned	25 MS. CLEMONS: Objection. To the
	Page 251	Page 253
1	of it. I'm not asking for the substance of any	1 extent that question calls for privileged
2	discussions. I'm asking for how he learned this	2 communications with counsel, I'm going to
3	fact.	3 instruct the witness not to answer if your answer
4	MS. CLEMONS: You are assuming that he	4 would be informed by communications with counsel.
5	learned something and then asking whether he	5 BY MS. GOODMAN:
6	learned that fact through communications with	6 Q. Are you able to answer that question?
7	counsel, which is the topic of the communication	7 A. I'm going to take counsel's direction.
8	with counsel through which someone would learn	8 Q. Okay. So the only knowledge you have as
9	something.	9 to the purpose of this call is from lawyers; is
10	MS. GOODMAN: And it's the same kind of	10 that correct?
11	thing that would appear on a privilege log. It	11 MS. CLEMONS: You can answer yes or no.
12	doesn't delve into the substance of the	12 THE WITNESS: I don't recall.
13	communications.	13 BY MS. GOODMAN:
14	MS. CLEMONS: I'm going to instruct the	14 Q. Okay. Sitting here today, can you think
15	witness not to answer.	15 of any other source, other than communications
16	BY MS. GOODMAN:	16 with counsel, that informed your understanding of
17	Q. Okay. Are you going to follow that	17 the purpose of this call in Exhibit 71 on January
18	instruction?	18 6th, 2023?
19	A. Yes.	19 MS. CLEMONS: I'm going to object to the
20	Q. Okay.	20 extent it calls for communications with other CMS
21	MS. GOODMAN: Can I have Tab 3?	21 employees that were directed by counsel. So you
22	(Exhibit No. 71, a document Bates	22 may answer so long as your answer would not
23	Numbered CMS-ADS-189390, was introduced.)	23 reveal privileged communications with counsel or
24	BY MS. GOODMAN:	24 directed by counsel.
25	Q. Exhibit 71, CMS-ADS-189390. This is a	25 BY MS. GOODMAN:

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Page 290 1 deposition is over and that Google does not have 2 grounds to hold the deposition open. 3 MS. GOODMAN: Okay. Thank you for your 4 time, Mr. Koepke. 5 THE WITNESS: It was my pleasure. This 6 was fun. 7 THE VIDEOGRAPHER: Time is 6:23 p.m. 8 We're off the record. 9 (Deposition concluded -- 6:23 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 292 1 Katherine Clemons Esq 2 Katherine.clemons@usdoj.gov 3 August 22nd, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/21/2023, Christopher Koepke (#6043164) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25
Page 291 1 C E R T I F I C A T E 2 3 I do hereby certify that I am a Notary 4 Public in good standing, that the aforesaid 5 testimony was taken before me, pursuant to 6 notice, at the time and place indicated; that 7 said deponent was by me duly sworn to tell the 8 truth, the whole truth, and nothing but the 9 truth; that the testimony of said deponent was 10 correctly recorded in machine shorthand by me and 11 thereafter transcribed under my supervision with 12 computer-aided transcription; that the deposition 13 is a true and correct record of the testimony 14 given by the witness; and that I am neither of 15 counsel nor kin to any party in said action, nor 16 interested in the outcome thereof. 17 18 WITNESS my hand and official seal this 19 22nd day o 20 21 22 23 24 25	Page 293 1 United States, Et Al v. Google, LLC 2 Christopher Koepke (#6043164) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 Christopher Koepke Date 25

74 (Pages 290 - 293)

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